



## **Battle Creek Zoning Board of Appeals**

### **Staff Report**

Meeting: September 11, 2012  
Appeal #Z-05-12

**To:** Zoning Board of Appeals  
**From:** Glenn Perian, Senior Planner  
**Date:** August 27, 2012  
**Subject:** Petition for a dimensional variance (Z-05-12) to permit an 11' x 11' gazebo to be placed in a front yard on a corner lot at 185 Yale Street.

#### **Summary**

This report addresses a petition from Catherine Case, seeking approval of a Dimensional Variance (Z-05-12), to place an 11' x 11' gazebo in a front yard at 185 Yale Street.

#### **Background/Project Information**

The subject site is located at 185 Yale Street. The subject lot is a corner lot located at the intersections of Yale Street and Clifton Street in an R-1C "Single Family Residential" Zoning District. The subject lot is approximately 88' wide x 92' deep and meets the minimum width and lot area standard for the R-1C zone. The request is to construct/place a gazebo in the front yard facing Clifton Street, 15' from the front property line and less than 10' from the main structure (house). Chapter 1286.01 of the Planning and Zoning Code specifically defines a gazebo as an accessory building, and Chapter 1286.05 specifically states accessory buildings shall not be erected in the front yard of a lot or parcel. Front yards are defined as yards located adjacent to all street frontages for parcels having frontage on two or more streets [Ch. 1286.05 (a)]. The gazebo was constructed without the proper permits being applied for or issued and discovered by the City through a citizen's complaint. The request is for a dimensional variance to allow a gazebo to be placed in the front yard along Clifton Street.

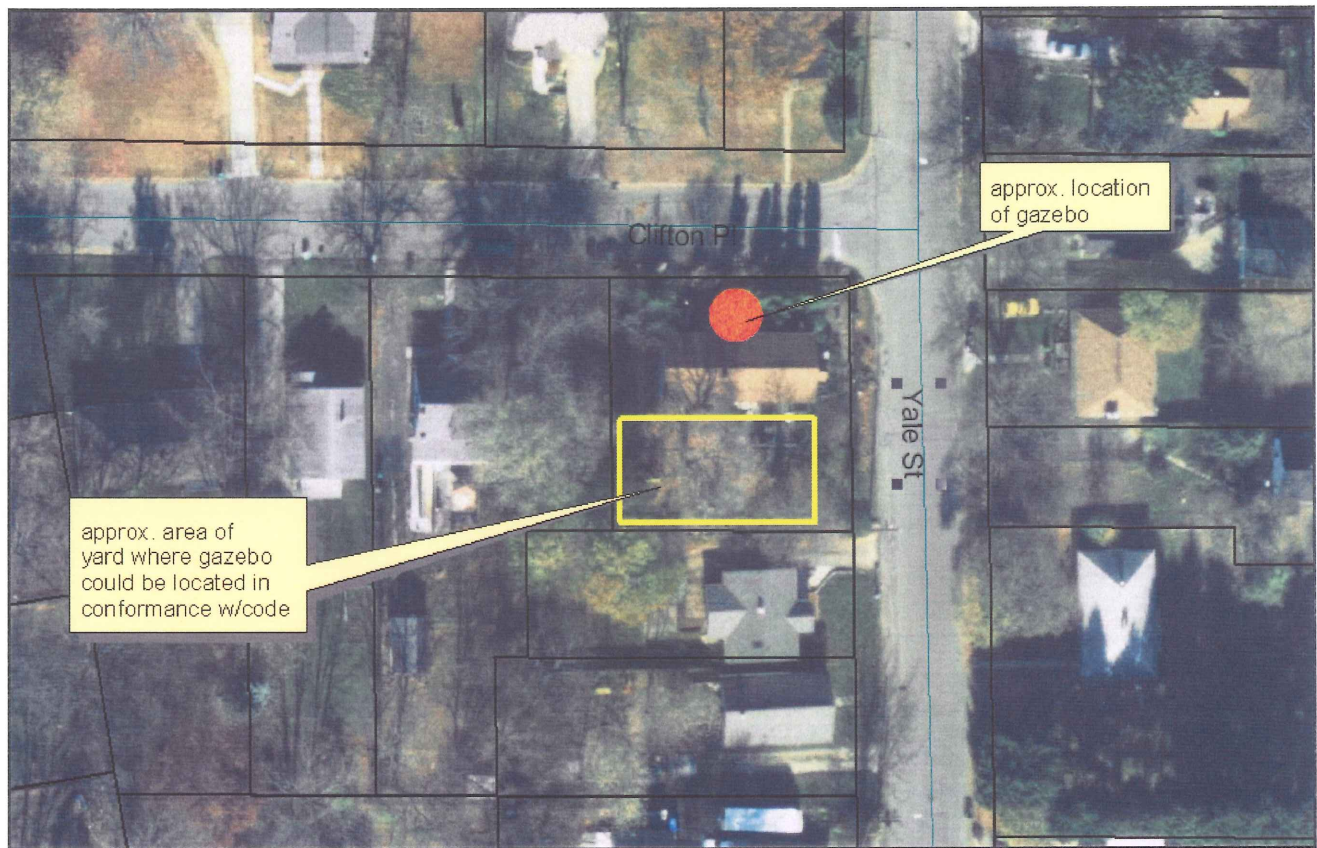
#### **Legal Description**

CLIFTON PLACE N 2/3 OF LOTS 26 & 27

#### **Public Hearing and Notice Requirements**

An advertisement of this public hearing was published in the Battle Creek SHOPPER NEWS on Thursday, August 23, 2012, not less than the 15 days before the hearing as required by State Law and ordinance.

Forty-two (42) notices of the public hearing were also sent by regular mail on August 20, 2012, to property owners and occupants located within 300 feet of the subject parcel. We have not received any correspondence in response to the notification of this hearing.



### Surrounding Land Uses

The subject property is located in a residential neighborhood.

### Applicable Zoning Ordinance Provisions

Chapter 1234.04

- (b) The Board shall have the authority to grant the following variations:
- (1) **Nonuse.** If there are practical difficulties for nonuse variances relating to the construction, structural changes, or alterations of buildings or structures related to dimensional requirements of the zoning ordinance or to any other nonuse-related standard in the ordinance in the way of carrying out the strict letter of the zoning ordinance, then the Board may grant a variance so that the spirit of the zoning ordinance is observed, public safety secured, and substantial justice is done. The Board may impose conditions as otherwise allowed under the Michigan Zoning Enabling Act, MCL 125.3101 et seq.; and [MCL 125.3604(7) and (8).]

### Analysis

The Appellant is requesting a variance to allow a gazebo to be placed in the front yard, 15' from the front property line, at 185 Yale Street. The Appellant has stated in the supporting material that the fact the property is located on a corner and the gazebo is a complementary component of the garden, the gazebo should be allowed to stay in its current location. The Appellant has supplied a cover letter and reasons in support of her appeal. A drawing showing the location of the gazebo and photos have also provided.



Is there something unique about this lot or property that makes relief necessary? We would agree that the subject lot is a corner lot. However, Chapter 1286 of the Planning and Zoning Code specifically states where accessory structures, including gazebos, may be placed on corner lot properties. The aerial photo on page 2 of this report shows that there are alternative locations on the property where the gazebo could be located, in conformance with code requirements. Furthermore, if the roof of the structure was removed, the structure would be classified as a deck, and could remain in its current location (see Ch. 1278.02). This option was explained to the Appellant in addition to the options outlined in the attached letters sent by Zoning Inspector Farmer requesting compliance.



Photo of gazebo from Clifton looking SW



Photo of rear yard looking SE

### **Findings and Recommendation**

The Zoning Board of Appeals can approve, approve with conditions, or deny this request. The Zoning Board of Appeals can also table or postpone the request pending additional information. In consideration of all variations from the Zoning Code, the Board shall, before making any such exceptions or variations, in a specific case, first determine that the conditions listed below are satisfied. Planning staff has reviewed these conditions and we believe that each condition cannot be justified in an affirmative manner. We have provided a rationale for each condition set forth below for Dimensional Variances. Therefore, the Planning staff recommends that the Zoning Board of Appeals deny the Dimensional Variance (Z-05-12) based on the following findings contained in this staff report.

- A) Staff finds that practical difficulty does not exist if the strict requirement of the Ordinance is applied to this specific building project and that the Board is authorized to deny the variance in this case. The practical difficulty from failure to grant the variance will not include substantially more than a mere inconvenience in this case. The Planning and Zoning Code specifically states where accessory structures can be located on corner lots, and in this case, the Appellant can comply with the Code. Furthermore, the Appellant has the option of removing the roof of the gazebo and keeping the structure in its current location.
- B) Staff does not believe that the practical difficulty is exceptional and peculiar to the subject parcel and the corner lot condition generally exists throughout the City. The Code specifically states where accessory building shall be located for corner lots. Staff believes that the parcel of land could reasonably be built upon in conformance

with the requirements of the Ordinance by simply relocating or redesigning the gazebo. Therefore, the variance should not be granted.

C) Staff believes that if the variance is granted that the intent of the Ordinance will be altered or that the rights of others will be compromised in that the property can be built upon in conformance with the Ordinance.

D) Staff believes that the variance requested exceeds the minimum necessary to provide relief from any stated practical difficulty and that the variance should not be granted because of the reasons stated in this report.

### **Attachments**

The following information is attached and made part of this Staff Report.

1. ZBA Petition Form (Petition #Z-05-12)
2. Supplemental information relating to the request
3. Sketch of property and location of gazebo
4. Photos
5. Letter of authorization from the owner of the property
6. Letters dated 5/23/12, 7/11/12 from Zoning Inspector

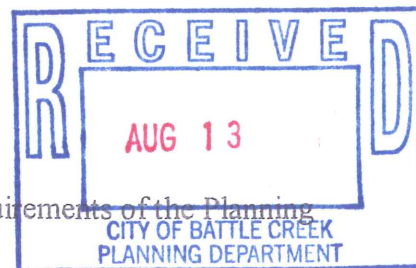


Date: 7/28/12

Appeal No. Z-05-12

**APPLICATION FOR A VARIANCE**  
**ZONING BOARD OF APPEALS**

*City of Battle Creek, Michigan*



An Appeal to the Zoning Board of Appeals to authorize a variance from the requirements of the Planning and Zoning Code (Part Twelve) of the City of Battle Creek.

Name of Appellant: Catherine Case

Address: 185 Vale St. Phone: 269-963-6379

Name of Owner (if different from Appellant): Tenicka Kingsley

Address: 16 Rapunculus St.  
Ladera Ranch, CA 92694 Phone: 224-392-9214

**TO THE ZONING BOARD OF APPEALS:** Request is hereby made for permission to:  
(Choose One)      Extend      Erect      Waive      Use      Convert      Enclose

Description:  
An 11' x 11' Gazebo in the side yard facing Clifton Place at  
the home of 185 Vale St. Battle Creek, MI. The gazebo will reside within  
garden area of the yard and integrated into the landscaping and chara  
of the house that has been featured in Battle Creek garden tours,  
previous years.

Contrary to the requirements of Section(s) 1280.05 (b) of the Planning and Zoning Code, upon the premises known as 185 Vale St. Battle Creek, MI, in accordance with the plans and/or plat record attached.

The proposed building or use requires Board action in the following area(s):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Property/Tax I.D. # No. 1900 - 00 - 027 - 0 Size of the Lot: Width \_\_\_\_\_ Depth \_\_\_\_\_

Size of Proposed Building: Width 11' Depth 11' Height 11'

The following reasons are presented in support of this appeal (complete each section):

- (a.) This property cannot be used in conformance with the ordinance without the requested variance because:

Please see attached letter,  
see item a)

- (b.) This problem is due to a unique situation not shared in common with nearby property owners because:

Please see the attached letter,  
see item b)

- (c.) Granting the variance would not alter the essential character of the area because:

Please see the attached letter,  
see item c)

- (d.) The problem is not self-created because:

Please see the attached letter,  
see item d)

- (e.) **USE VARIANCES ONLY** It is not possible to use this particular property for any other use currently allowed in the zoning district because:

Please see the attached letter,  
see item e)

I hereby affirm that, to the best of my knowledge, all the above and accompanying statements and drawings are correct and true. In addition, I give permission to the City of Battle Creek's Planning Department staff to access my property, if necessary, to take photographs of the subject of this appeal.

Catherine Case

(Print Appellant Name)

Catherine M. Case

(Signature of Appellant)

185 Vale St. Battle Creek, MI 49017

(Address of Appellant)

If you require additional information or assistance in filling out this application, please contact the Planning Department at (269) 966-3320.



July 28, 2012

Zoning Board of Appeals  
City of Battle Creek  
77 East Michigan Ave, Ste. 204  
Battle Creek, MI 49017

Dear Zoning Board of Appeals:

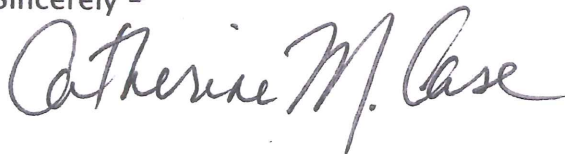
Attached is an application for a variance to the construction of a gazebo in the garden area of my side yard at 185 Yale St. I have proudly lived at 185 Yale St. for over twenty years and for much of that time have taken an active interest in gardening and positively contributing to the character of my neighborhood. In recent years, I was an active participant, with my yard featured, in the Battle Creek Home and Garden show. I frequently have neighbors or unknown passersby stop to compliment me on the tastefulness and beauty of the landscaping and yard.

I take great pride in the design and natural beauty of my yard and recently added an 11' X 11' gazebo in the side yard that runs parallel to Clifton St. This gazebo is set back from the street and is hardly noticeable as it blends naturally with the house and garden. It will be used as a quiet sitting place within the garden. I have become aware that this structure does not conform to code as my side yard is considered to be a "front yard" since my home sits on a corner lot.

As you will see from the attached photographs, this structure is unobtrusive, consistent with the neighborhood and a tasteful addition to the garden area that is on this side of the house. I am submitting this application for a variance approval to keep this gazebo that I have thoughtfully planned and built in a way that enhances the neighborhood and complements my home.

I greatly appreciate your time and consideration in reviewing this application. Through this process of understanding my need to submit an application, the inspectors I have talked to have been very kind and helpful. I would be happy to provide any additional information, pictures or descriptions for the Board's consideration.

Sincerely -

A handwritten signature in dark ink, reading "Catherine M. Case". The signature is written in a cursive, flowing style with a large initial "C".

Catherine Case

## APPLICATION

Request is hereby made for permission to:

Erect an 11' X 11' gazebo in the side yard facing Clifton St. at the home at 185 Yale St., Battle Creek, MI. This gazebo will reside within the garden area of the yard and integrated into the landscaping and character of the house that has been featured in Battle Creek garden tours in previous years.

The proposed building or use requires Board action in the following areas:

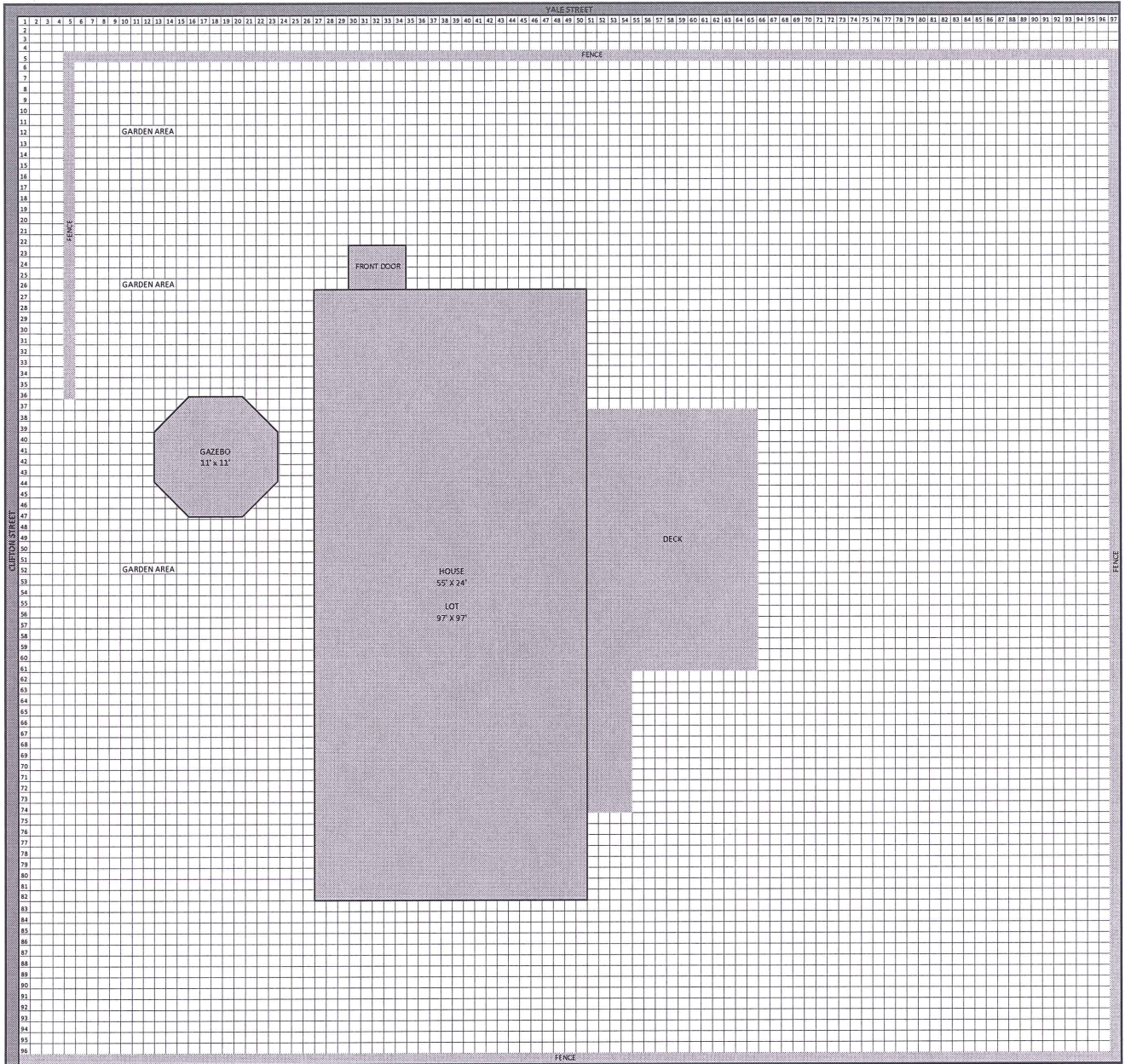
- The gazebo resides in the side yard of 185 Yale St., but is technically considered to be in the "front yard" since 185 Yale St. is a corner lot and the Gazebo faces Clifton Street which runs along the side of the house
- The gazebo is less than 10' from the house. This is in order to maximize the distance from the property line (15' from property line).

Size of the proposed building: 11'W X 11'D X 11'H

The following reasons are presented in support of this appeal:

- a) This property cannot be used in conformance with the ordinance without the requested variance because the property is a corner lot and, as such, the side yard is considered to be a "front yard." The gazebo is placed within the garden area of the side of the house.
- b) This problem is due to a unique situation not shared in common with nearby property owners because 185 Yale St. is a corner lot. The gazebo is placed on the side of the house within the garden area of the yard. If considered a side yard, the gazebo would be conforming and not require a variance.
- c) Granting the variance would not alter the essential character of the area because the gazebo is a complementary structure to the garden area of the yard. The gazebo blends naturally with the design of the garden and is virtually unnoticeable from the street or neighboring yards. The yard and garden is very well maintained and has been featured in the Battle Creek Home and Garden Tour in previous years.
- d) The problem is not self-created because the home is situated on a corner lot. The garden has existed on the Clifton side of the house for many, many years.
- e) It is not possible to use this particular property for any other use currently allowed in the zoning district because the garden resides on the side of the house and the gazebo is an integrated feature of the garden









taken from driveway.  
(Not visible to street, only  
driveway at 185 Yale St.)

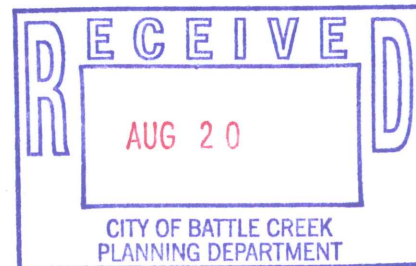


View from cliff-top place, taken at fence line  
a few feet from curb





Phone: 224-392-9214  
Fax: 949-269-6397



# Fax

**To: Zoning Board of Appeals**

**From: Tenicka Kingsley**

**Fax: 269-966-3529**

**Pages: 2**

**Re: Permission for Variance**

**Date: August 20, 2012**

This letter is permission for Catherine Case to move forward with the variance filed on 7/28/12.  
Thank you!  
Tenicka Kingsley

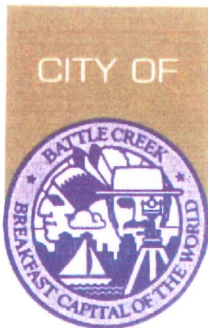
8/20/12 08:31AM PDT -> Zoning Board of Appeals 2699663529 Pg 2/2  
To The City of Battle Creek: Zoning Board of Appeals,

I, Tenicka Kingsley, homeowner of 185 Yale St. (Property ID: 1900-00-027-0), give Catherine Case permission to submit the "Application For A Variance" for the gazebo in the side yard facing Clifton Place. I have seen the gazebo and believe it is a tasteful, inconspicuous addition to the property. Consequently, I assisted Catherine Case with the application and I am aware everything written in her "Application For A Variance" as well as the letter and drawings enclosed. I give her permission to proceed forward with this variance as well as address matters that arise in relation to the variance process.

If you have any questions or concerns, please contact me at 224-392-9214.

Thank you,

Tenicka Kingsley



**BATTLE CREEK**  
DEPARTMENT OF PLANNING AND ZONING

May 23, 2012

Catherine Case  
185 Yale St  
Battle Creek, MI 49017

**Re: Accessory Building, 185 Yale St, Battle Creek, MI, ID 1900-00-027-0**

Dear Ms. Case,

It has been brought to our attention that you have an accessory building, (gazebo) in the front yard of your property.



**Chapter 1232 of the Battle Creek City Zoning Code** requires that an application for permit be submitted showing the plot plan, the size, shape and location of the building to be erected in respect to the lot, the size, shape and location of any existing buildings, and such other information as may be necessary to provide for the enforcement of this Zoning Code.

You probably were not aware of the zoning requirements. Any accessory building on your property must be located within the

following perimeters:

1. The building must be in the rear yard.
2. The building must be a minimum 10 ft from any other building.
3. The building must be a minimum 3 ft from the side lot lines.

A Utility Zoning Permit is required, for each structure, if the building is only one story and is not larger than 200 square feet. A Building Permit is required, for each structure, when it exceeds one story or 200 square feet.

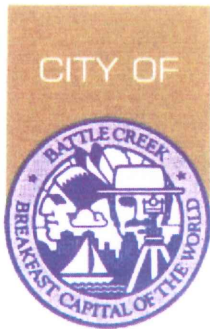
I am enclosing a "Utility Zoning Permit Application" for your convenience. You may photocopy the application if you need more than one. The application should be returned to the Battle Creek City Hall, 10 N. Division St, Ste 111, City Clerk's Office. Please submit your application within seven (7) calendar days from the date of this notice for processing. Failure to respond may result in civil or other court ordered remedies.

Your prompt attention to this matter is greatly appreciated.

Respectfully,

David L. Farmer  
Zoning Inspector





BATTLE CREEK  
DEPARTMENT OF PLANNING AND ZONING

July 11, 2012

Catherine Case  
185 Yale St  
Battle Creek, MI 49017

**Re: Accessory Building, 185 Yale St, Battle Creek, MI, ID 1900-00-027-0**

Dear Ms. Case,

In a letter dated May 23, 2012, I wrote in part the following:

**Chapter 1232 of the Battle Creek City Zoning Code** requires that an application for permit be submitted showing the plot plan, the size, shape and location of the building to be erected in respect to the lot, the size, shape and location of any existing buildings, and such other information as may be necessary to provide for the enforcement of this Zoning Code.

A Utility Zoning Permit is required, for each structure, if the building is only one story and is not larger than 200 square feet. A Building Permit is required, for each structure, when it exceeds one story or 200 square feet.

After reviewing the Zoning Permit Application that you submitted and several telephone conversations with you, I cannot approve the structure in the Clifton Street front yard. You cannot attach it to your house because you would need a minimum of twenty-five (25) feet of setback from the right-of-way. You may re-locate it to the rear yard, ten (10) feet from any other building and three (3) feet from the side lot lines. You may petition the Zoning Board of Appeals for a variance to the zoning code that would allow you to be in non-conformance. You have thirty (30) calendar days from the date of this letter (August 10, 2012) to file a variance petition to the Zoning Board of Appeals or remove the gazebo from the Clifton Place front yard. Failure to comply will result in a "Class C Civil Infraction" with a potential fine of \$50/day or other court ordered remedies.

**Pursuant to Chapter 1232.04, any appeal from a decision of the Zoning Administrator may be made to the Zoning Board of Appeals as provided in Chapter 1234. In accordance with the Zoning Board of Appeal Bylaws, Article VIII, Section 2, you have fifteen (15) days from the date of this letter in which to file your appeal of this decision, by submitting the attached application. This would be different than a variance petition.**

Your prompt attention to this matter is greatly appreciated.

Respectfully,

David L. Farmer  
Zoning Inspector